

1 THOMAS M. HERLIHY (SBN 83615)
2 JOHN T. BURNITE (SBN 162223)
3 KELLY, HERLIHY & KLEIN LLP
4 44 Montgomery Street, Suite 2500
5 San Francisco, CA 94104-4798
6 Tel.: (415) 951-0535
7 Fax: (415) 391-7808
8 Email: herlihy@kelher.com
9 jtb@kelher.com
10

11 Attorneys for Defendants
12 UNUM GROUP, UNUM LIFE INSURANCE
13 COMPANY OF AMERICA, FIRST UNUM
14 LIFE INSURANCE COMPANY OF AMERICA, and THE
15 PAUL REVERE LIFE INSURANCE COMPANY
16

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19

20 ALEXANDER P. SOMMER, an individual, by
21 and through his Guardian ad Litem,
22 CHRISTIAN SOMMER,

23 Plaintiff,

24 vs.

25 UNUM, UNUMPROVIDENT
26 CORPORATION; UNUM PROVIDENT LIFE
27 INSURANCE COMPANY OF AMERICA;
28 FIRST UNUM LIFE INSURANCE
COMPANY OF AMERICA; PAUL REVERE
LIFE INSURANCE COMPANY,

Defendants

Case No.: C07-2846 SC

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: September 7, 2007

Time: 10:00 a.m.

Ctrlm. 1 (17th Floor)

1 **1. Jurisdiction and Service**

2 The Parties agree that this court has federal question jurisdiction and well as diversity
3 jurisdiction.

4 All parties have been served and have appeared.

5 **2. Facts**

6 **Plaintiff's Contentions/Allegations**

7 Plaintiff contends that the following matters are relevant to the present action. During or
8 about May 1995, Plaintiff Alexander P. Sommer, a partner in a stock brokerage firm, was
9 diagnosed with organic brain deficits secondary to multiple brain surgeries and brain infection.
10 Beginning in the mid 1990's, plaintiff Alexander Sommer sought disability benefits under
11 policies he had obtained both individually and through various employers including , Henry F.
12 Swift & Company, Piper Jaffray Inc., and Wedbush Morgan Securities. Following denial by
13 Unum of the claims for benefits under those policies allegedly purchased through his employers,
14 Sommer sued in federal court. Significantly, Provident Accident and Life Insurance Company, ,
15 determined that Sommer was disabled and paid him the full amount of his benefits due under the
16 policy. Unum Group is Provident's parent company.

17 **Defendants' Contentions/Allegations**

18 Defendants contend that the following matters are relevant to the present action. In
19 *Sommer v. First Unum Life, et al.*, United States District Court, Northern District of California,
20 Case No. CV-96-02407 DLJ (PJH), District Court Judge Jensen issued a final judgment.
21 ("*Sommer I.*"). The judgment was affirmed on appeal to the Ninth Circuit. *Sommer v. Unum*
22 *Life Ins. Co of America*, 1999 U.S. App. LEXIS 5388 (9th Cir. 1999). Sommer filed his claim
23 with the company again. His claim was for the same alleged disability and under the same
24 policies. Unum again rejected the claims. Plaintiff alleges that Unum did so without further
25 investigation. Following this second rejection, Sommer filed a second suit in federal court.
26 *Sommer v. Unum Life*, United States District Court, Northern District of California, Case No.
27 CV-97-4159 SBA. ("*Sommer II*"). In *Sommer II*, District Judge Armstrong dismissed the case
28 based on lack of jurisdiction and because Sommer II was barred by res judicata. Judge

1 Armstrong also sanctioned plaintiff's counsel \$1,000.00. The Ninth Circuit affirmed on res
 2 judicata grounds. *Sommer v. Unum Life Ins. Co of America*, 1999 U.S. App. LEXIS 5382 (9th
 3 Cir. 1999). After yet another rejection of the same disability claim by Unum, Sommer brought a
 4 third suit, again in Judge Armstrong's court. *Sommer v. Unum Life*, the United States District
 5 Court, Northern District of California, Case No. CV-00-01368 SBA. ("*Sommer III*"). The
 6 district court dismissed Sommer III on res judicata grounds. The district court also imposed
 7 \$2,500 in Rule 11 sanctions and imposed attorneys' fees and costs against Sommers attorney
 8 (John G. Warner) pursuant to 29 U.S.C. Section 1132(g)(1) after finding that the *Sommer III*
 9 complaint was frivolous in light of *Sommer I* and *Sommer II*. Plaintiff appealed. The Ninth
 10 Circuit affirmed the *Sommer III* district court's decision in all respects.

11 Plaintiff filed this matter ("*Sommer IV*") in California Superior Court based on the same
 12 alleged disability and same policies previously litigated. Defendants timely removed the matter.

13 **3. Legal Issues**

14 **a. Plaintiff's contentions**

- 15 • Whether plaintiff suffered injury to his person or property due to
- 16 defendants' operation of an enterprise in or through a pattern of
- 17 racketeering activity.

18 **b. Defendants' contentions**

- 19 • Whether plaintiff's claims are barred by res judicata;
- 20 • Whether the court should exercise its inherent power to deem plaintiff a
- 21 vexatious litigant;
- 22 • Whether the court should impose Rule 11 sanctions against plaintiff and/or
- 23 his attorney of record; and
- 24 • Whether the court should grant defendants' attorneys fees and costs
- 25 insured for having to defend themselves in *Sommer IV*.

26 **4. Motions**

27 Defendants intend to file a motion for summary judgment. Defendants also will seek a
 28 judicial finding that Alexander Sommer is a vexatious litigant, and an Order that Sommer will be

1 enjoined from filing any further action or pleadings against defendants or be required to post
 2 security to proceed with any litigation. Defendants anticipate filing a motion for sanctions under
 3 FRCP 11 related to the frivolous filing of *Sommer IV*. Defendants also intend to file a motion to
 4 recover their attorneys' fees and costs in this matter.

5 Plaintiff intends to file a Motion for Summary Judgment/Adjudication. Other Law and
 6 Motion practice as dictated by the course and progress of the litigation

7 **5. Amendment of Pleadings**

8 The parties presently do not anticipate any amendments to the pleadings.

9 **6. Evidence Preservation**

10 The parties have undertaken reasonable steps to preserve evidence relevant to the issues
 11 in this matter.

12 **7. Disclosures**

13 The parties have agreed to defer making initial disclosures until after defendants' motion
 14 for summary judgment is heard.

15 **8. Discovery**

16 Due to the procedural issues in this matter, defendants request that discovery be stayed
 17 pending resolution of their motion for summary judgment.

18 **9. Class Actions**

19 Not Applicable.

20 **10. Related Cases**

21 There are no pending related actions. However, as noted above, defendants contend that
 22 *Sommer IV* is barred by res judicata.

23 On May 10, 2002, The United States Court of Appeals for the Ninth Circuit gave
 24 consideration to the Sommer case for the fifth time, issuing a memorandum (not for publication)
 25 on the following matters which, defendants contend, are related to the present matter:

- 26 • *Sommer v. Unum Life*, United States Court of Appeals for the Ninth Circuit, Case
 27 No. 01-15733, (United States District Court, Northern District of California, Case
 28 No. CV-00-01368 SBA);

- 1 • *Sommer v. Unum Life*, United States Court of Appeals for the Ninth Circuit, Case
- 2 Nos. 01-15734, (United States District Court, Northern District of California,
- 3 Case No. CV-00-01368 SBA);
- 4 • *Sommer v. First Unum Life*, et al., United States Court of Appeals for the Ninth
- 5 Circuit, Case Nos. 01-15735, (United States District Court, Northern District of
- 6 California, Case No. CV-96-02407 DLJ (PJH)); and
- 7 • *Sommer v. Unum Life*, United States Court of Appeals for the Ninth Circuit, Case
- 8 Nos. 01-15736, (United States District Court, Northern District of California,
- 9 Case No. CV-00-01368 SBA).

10 The Ninth Circuit affirmed the judgments of both district courts and stated “These cases
11 are concluded.”

12 **11. Relief**

13 Plaintiff seeks special, general and exemplary damages.

14 Defendants do not seek monetary relief except to the extent sanctions, attorneys’ fees and
15 costs are sought. Defendants will ask the court to deem plaintiff to be a vexatious litigant and to
16 enjoin him from filing any other litigation against defendants unless he first obtains judicial
17 approval to file any such new litigation and/or posts security. Defendants also will seek
18 attorneys’ fees and costs of suit.

19 **12. Settlement and ADR**

20 The parties have agreed that Early Neutral Evaluation is the most appropriate ADR
21 method for this matter. However, defendants respectfully request that the time to complete ADR
22 be stayed or deferred until after defendants’ motion for summary judgment is heard.

23 **13. Consent to Magistrate Judge For All Purposes**

24 The parties do no consent to a Magistrate Judge for this matter.

25 **14. Other References**

26 Not applicable at this time.

27 //

28 //

1 **15. Narrowing of Issues**

2 The parties anticipate that the issues will be significantly narrowed by their court's
3 determination of the respective Motions for Summary Judgment.

4 **16. Expedited Schedule**

5 Defendants believe that an early summary judgment motion is the most efficient manner
6 to expeditiously resolve this matter. Plaintiff agrees that such motions are the most efficient
7 means of advancing or resolving the litigation.

8 **17. Scheduling**

9 The Parties propose to defer setting pretrial dates, in anticipation of defendants' motion
10 for summary judgment.

11 **18. Trial**

12 Plaintiff demanded a jury trial in this matter. If plaintiff's claims for relief survive
13 summary judgment, the trial will take 10 days according to plaintiff.

14 **19. Disclosure of Non-Party Interested Entities or Persons**

15 Plaintiff is currently unaware of any Non-Party Interested Entities or Persons .

16 Defendants filed their Certification of Interested Entities or Persons as follows: other
17 than the named parties, there is no such interest to report.

18 **20. Other Matters**

19 None at this time.
20
21

22 LAW OFFICE OF STEPHEN W. STEELEMAN

23
24 Dated: August 31, 2007

25 By _____

26 Stephen W. Steelman
27 Attorneys for Plaintiff
28 ALENXANDER P. SOMMER

-5-

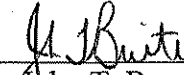
JOINT CASE MANAGEMENT CONFERENCE STATEMENT

CASE NO. C07-2846 SC

KELLY, HERLIHY & KLEIN LLP

Dated: August 31, 2007

By



John T. Burnite

Attorneys for Defendants

UNUM GROUP, UNUM LIFE INSURANCE
COMPANY OF AMERICA, FIRST UNUM LIFE
INSURANCE COMPANY OF AMERICA, and
THE PAUL REVERE LIFE INSURANCE COMPANY

E:\27162\PO7.doc